

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

| | | |
|------------------------|---|-------------------------------|
| VENICE PI, LLC, LHF |) | Civil No. 17-00335 JAO-KJM |
| PRODUCTIONS, INC., ME2 |) | |
| PRODUCTIONS, INC., AND |) | ORDER WITHDRAWING THE |
| BODYGUARD PRODUCTIONS, |) | OCTOBER 9, 2018 ORDER TO SHOW |
| INC., |) | CAUSE AND GRANTING |
| |) | PLAINTIFFS LEAVE TO FILE A |
| Plaintiffs, |) | THIRD AMENDED COMPLAINT |
| |) | |
| vs. |) | |
| |) | |
| DOE 1 d/b/a/ POPCORN- |) | |
| TIME.TO, ET AL., |) | |
| |) | |
| Defendants. |) | |
| |) | |

ORDER WITHDRAWING THE OCTOBER 9, 2018
ORDER TO SHOW CAUSE AND GRANTING PLAINTIFFS
LEAVE TO FILE A THIRD AMENDED COMPLAINT

On September 28, 2018, Plaintiffs Venice PI, LLC, LHF Productions, Inc., ME2 Productions, Inc., and Bodyguard Productions, Inc. (collectively, “Plaintiffs”) requested an extension of time to serve process for an additional 365 days retroactively from January 11, 2018, the previously extended deadline this Court set for service on August 22, 2017. *See* ECF Nos. 11, 66. Plaintiffs asserted that they had obtained evidence that Defendant Doe 1, the individual behind popcorn-time.to, resides outside of the United States. Plaintiffs thus contended that they required more time to serve Defendant Doe 1 overseas through the Hague Service

Convention, as the date to serve the Second Amended Complaint had expired on January 11, 2018. *See* ECF No. 12.

On October 9, 2018, this Court issued an Order to Show Cause, explaining that the facts alleged in the Second Amended Complaint (“SAC”) were insufficient to establish joinder in this action. *See* ECF No. 70. The Court ordered Plaintiffs to show cause why the district court should not dismiss without prejudice Defendant Doe 1 from this action or sever the claims against Defendant Doe 1 pursuant to Federal Rule of Civil Procedure 21. *Id.* Plaintiffs filed their Response to the Order to Show Cause on November 5, 2018 (“Response”). *See* ECF No. 70. Based upon the Response, the Court withdraws the Order to Show Cause.

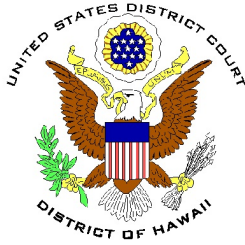
Notwithstanding the withdrawal, the Court notes that the SAC does not allege any facts regarding Defendant Doe 1. In addition, Plaintiffs allege new facts in their Response that were not alleged in the SAC. The Court thus grants Plaintiffs leave to file a Third Amended Complaint; however, Plaintiffs must: (1) incorporate all the facts in the Response not alleged in the SAC that are sufficient to support joinder and jurisdiction in the Third Amended Complaint; (2) add any and all defendants Plaintiffs seek to join in this action in the Third Amended Complaint; and (3) promptly take all necessary steps to serve the Third Amended Complaint on all defendants named in the Third Amended Complaint.

The Court cautions Plaintiffs that further extensions or leave to amend the complaint will not likely be granted absent exceptional circumstances. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (holding that liberality in granting leave to amend must be restrained by a court’s consideration of a number of factors, including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.”); *see also Millar v. Bay Area Rapid Transit Dist.*, 236 F. Supp. 2d 1110, 1113 (N.D. Cal. 2002) (listing in addition to the *Foman* factors, “the impact on judicial economy, judicial resources and the Court’s ability to manage cases and control its dockets” as factors supporting denial of leave to amend).

The original complaint in this action was filed over a year ago, and a Rule 16 Scheduling Conference has yet to be scheduled in this case. The Court strongly encourages Plaintiffs to move forward expeditiously in prosecuting their case. Plaintiffs shall file their Third Amended Complaint no later than January 3, 2019.

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, December 20, 2018.



/S/ Kenneth J. Mansfield
Kenneth J. Mansfield
United States Magistrate Judge

Civil No. 17-00335 JAO-KJM; *Venice PI, LLC, et al. v. Doe 1, et al.*; ORDER
WITHDRAWING THE OCTOBER 9, 2018 ORDER TO SHOW CAUSE AND GRANTING
PLAINTIFFS LEAVE TO FILE A THIRD AMENDED COMPLAINT